FILED
FEB 8 1949
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1948

No. ~~553~~ 21

STEPHEN J. ROTH, Attorney General, Successor to EUGENE F. BLACK, Attorney General, in the name and on behalf of the People of the State of Michigan,

Petitioner,

vs.

PRESTON DELANO, Comptroller of the Currency of the United States of America, and

JOSEPH T. CONNOLLY, as Receiver of the First National Bank—Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND SUPPORTING BRIEF

STEPHEN J. ROTH,
Attorney General,

EDMUND E. SHEPHERD,
Solicitor General,

ARCHIE C. FRASER,
Assistant Attorney General,

State Capitol,
Lansing 2, Michigan

JULIUS H. AMBERG,
Special Assistant Attorney General,

500 Michigan Trust Building,
Grand Rapids 2, Michigan,

Attorneys for Petitioner

FRANKLIN DE KLEINE COMPANY, STATE PRINTERS, LANSING, MICHIGAN
1949

INDEX

SUBJECT INDEX

	Page
Petition for Writ of Certiorari	1–8
Opinion Below	2
Basis of Jurisdiction	2
Summary Statement	2
Questions Presented	5
Reasons for the Allowance of the Writ	6
Conclusion	8
Brief in Support of Petition for Writ of Certiorari	9–17
Right to Seek Certiorari in the Alternative	9
Declaratory Judgment an Immaterial Factor	10
Earlier Decisions in the Court Below	11
The Decision Below is Erroneous	13
Minor Issues	15

CITATIONS

Page

Cases:

American Surety Co. v. Bethlehem National Bank, 314 U.S. 314 ..... 13, 16

Anderson National Bank v. Luckett, 321 U.S. 233 ..... 6, 7, 13, 14, 15, 17

Armstrong v. American Exchange National Bank, 133 U.S. 433 16

Bradford Electric Light Co. v. Clapper, 284 U.S. 221 10

Case v. Bank, 100 U.S. 446 16

Cox v. Hart, 260 U.S. 427 16

Earle v. Conway, 178 U.S. 456 ..... 13, 16

Evans Products Co. v. State Board, 307 Mich. 506 16

First National Bank of San Jose v. California, 262 U.S. 366 15

International Trust Co. v. Weeks, 203 U.S. 364 16

In re Commercial National Bank, 45 Fed. Supp. 482 (E.D. Pa.) 12

Merrill v. National Bank of Jacksonville, 173 U.S. 131 ..... 13, 16

Provident Institution for Savings v. Malone, 221 U.S. 660 ..... 13, 14, 16

Rushton v. Schram, 143 F. 2d 554 (C.C.A. 6th) 11, 16

Security Savings Bank v. California, 263 U.S. 282 ..... 13, 14, 15

Page

Starr v. O'Connor, 118 F. 2d 548 (C.C.A. 6th), Cert. denied, 314 U.S. 695 11

Starr v. Schram, 143 F. 2d 561 (C.C.A. 6th) 11, 16

United States v. Klein, 303 U.S. 276 ..... 7, 14, 17

Statutes:

12 U.S. Code Sec. 194 ..... 5, 12, 13, 16

28 U.S. Code Sec. 1254(1) 2

Sec. 1254(2) 9

Sec. 1348 15–16

Sec. 2101(c) 2

Sec. 2201 3

Sec. 2202 3

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1948

No. —

STEPHEN J. ROTH, Attorney General, Successor to EUGENE F. BLACK, Attorney General, in the name and on behalf of the People of the State of Michigan,

Petitioner,

vs.

PRESTON DELANO, Comptroller of the Currency of the United States of America, and

JOSEPH T. CONNOLLY, as Receiver of the First National Bank—Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America,

Respondents.

PETITION FOR WRIT OF CERTIORARI

To the Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Stephen J. Roth, respectfully represents that he is Attorney General of the State of Michigan and successor to Eugene F. Black, Attorney General of said State, and in the name and on behalf of the People of the State of Michigan prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit entered in this cause (No. 10,615 in said court,

sub nom. Eugene F. Black, Attorney General, v. Preston Delano, Comptroller of the Currency of the United States of America, et al.) on November 30, 1948, affirming the order of the District Court of the United States for the Eastern District of Michigan, Southern Division, entered on July 10, 1947. Petitioner was substituted as the appellant and as an attorney for the appellant in this cause by order of said Court of Appeals on January 11, 1949 (R. 102).

OPINION BELOW

The opinion of the Court below, filed November 30, 1948, is reported in 170 F. 2, 966. It is also contained in the Record (page 98). No opinion was filed in the District Court.

BASIS OF JURISDICTION

The jurisdiction of this Court is invoked under Title 28, U. S. Code, Sec. 1254(1), as revised by the Act of June 25, 1948; writ of certiorari being applied for within ninety days after the entry of judgment, as required by Title 28, U. S. Code, Sec. 2101(c), as revised as aforesaid.

Petitioner is also appealing from the same judgment below. This petition is therefore made as alternative to such appeal. Granting of this petition is sought if the appeal is dismissed for want of jurisdiction.

SUMMARY STATEMENT

The case arose on petition of the Attorney General of Michigan, filed in the District Court June 25, 1946, for a declaratory judgment and other relief, pursuant to Sec.

274-D of the then Judicial Code, now in substance contained in Title 28, U. S. Code, Sections 2201 and 2202, as revised (R. 1-42). The petition prayed that the Court declare that Act 238 of the Public Acts of Michigan for 1897 and amendments thereto, as amended by Act 170 of the Public Acts of Michigan for 1941, being the law of Michigan covering escheatable estates and abandoned property, is applicable to deposits in First National Bank-Detroit, a national banking association with its office in Detroit in the District, which bank had been declared insolvent in 1933 and liquidated (R. 2-3, 15).

The Michigan statute is copied in full as an exhibit to the petition in the District Court (R. 18-38). Sec. 13a (R. 33) provides for escheat to the State where a depositor has any money or credits in the possession or control of a depository, where no dealings or transactions have been had with respect thereto between the depositor and the depository for seven years or more. Sec. 4b (R. 20) defines "depository" so as to include, among others, a bank and the receiver thereof.

The defendants were Preston Delano, Comptroller of the Currency, and Joseph T. Connolly, a resident of Detroit, Receiver of the bank and Detroit representative of the Comptroller (R. 2). Delano appeared specially and moved to quash and dismiss because he was not a resident of the District (R. 62-63). The motion was granted (R. 81), and no question having been raised in the Circuit Court of Appeals with respect to his dismissal, Delano is no longer in the case.

The petition also prayed that it be declared that the defendants are bound by the above mentioned Michigan laws

and that they be enjoined from removing certain records from the State of Michigan (R. 15-16).

Receiver Connolly appeared generally (R. 46) and moved to dismiss the petition (R. 64-65) because it failed to state a cause of action. It was upon this ground that the Circuit Court of Appeals decided the case. Connolly also claimed that the Court lacked jurisdiction over the subject matter and that suit would not lie against him as Receiver or as Representative of the Comptroller (R. 64-65).

There had been prior suits in the Circuit Court of Appeals for the Sixth Circuit relating to Michigan escheat laws. These will be discussed in the accompanying brief.

In the present case the State of Michigan claimed applicability of its escheat laws to deposits in the bank, where the depositors had proved claims but thereafter had not been located to receive liquidation dividend checks or, if they had received such checks, had failed to cash the same (R. 5, 12-13). The bank liquidation resulted in dividends to depositors aggregating 107.565% of the principal of the deposits, most of the distributions being authorized more than seven years before institution of this suit (R. 5). Inasmuch as the defendant refused to make report under the escheats law (R. 12-13), petitioner does not know the amount of dividend checks unclaimed or uncashed for more than seven years, but defendant's counsel stated in the Court below that the same totalled in the neighborhood of $300,000.00.

The District Judge granted defendant Connolly's motion and dismissed plaintiff's petition without opinion (R. 81).

The Circuit Court of Appeals affirmed the order of dismissal (R. 98) on the ground that Michigan's escheat law,

if applied to a national bank in liquidation, constitutes an unlawful interference with the liquidation of such bank as prescribed in the National Bank Law (Title 12, U. S. Code, Sec. 194; R. S. 5236), which provides:

> "From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held."

The Court, in affirming the dismissal, assumed without deciding that the action was brought in the right District (R. 100), thus basing its decision solely on the merits, viz., that the Michigan statute is invalid as repugnant to the National Bank Law.

QUESTIONS PRESENTED

1. Whether the Circuit Court of Appeals erred in affirming the District Court's dismissal of plaintiff's petition upon the ground that the Michigan escheat law, in its application to deposits in a national bank in liquidation, constitutes an unlawful interference with the liquidation of the bank and is invalid as repugnant to the National Bank Law of the United States.

2. Whether, if the Circuit Court so erred, the District Court where the bank was located had jurisdiction over the subject matter and the right to render judgment affirming the applicability of the escheat law in a suit brought against Connolly, a resident of the District, Receiver of the national bank located in the District, and representative of the Comptroller of the Currency; questions which the Circuit Court of Appeals assumed in favor of plaintiff but did not decide.

REASONS FOR THE ALLOWANCE OF THE WRIT

1. The Court below has decided an important question of federal law which has not been expressly decided by this Court but should be here settled. The application of State escheat laws is a matter of great and increasing importance throughout the country and is of particular importance to the State of Michigan in this case involving a national bank having $333,173,379.40 of proven deposits and claims (R. 66). The Court below endeavored to distinguish *Anderson National Bank v. Luckett*, 321 U.S. 233, on the ground that there an escheat law was held applicable only to a solvent and operating national bank (R. 99). If by going into liquidation a national bank may escape escheat laws, and if liquidation dividends on proven claims, where the claimant has disappeared or died, can thus be retained in the Treasury of the United States rather than paid to the State, which has sole jurisdiction over escheatable and abandoned property, then not only will the States be deprived of large sums to administer for their residents but the law of the United States will have been held to invade a subject matter heretofore held to be reserved to the States. Bank deposits, being the principal source of abandoned property, will thus, if the decision below is permitted to stand, be removed from

escheat at the very time their abandonment most usually becomes apparent, that is, when the bank goes into liquidation.

2. The Court below has decided a federal question relating to the supposed clash between State escheat laws and the National Bank Law in a way probably in conflict with applicable decisions of this Court. The Michigan escheat law does not substantially differ from that of Kentucky, upheld as to an operating national bank in *Anderson National Bank v. Luckett*, 321 U.S. 233. There is no valid reason why the Court below should not have followed that decision and upheld the escheat law with respect to a national bank in liquidation. There is nothing in the National Bank Law purporting to cut off the right of the State to proven but abandoned deposits, whether a national bank is in liquidation or not. The decision below is also in conflict with the principles announced in *United States v. Klein*, 303 U.S. 276, where the Pennsylvania escheat law was held validly applicable to funds belonging to bondholders who could not be found and which funds, pursuant to R.S. Sections 995 and 996 (now in substance Title 28, U.S. Code, Sections 2041 and 2042 as revised), had been paid from the registry of a federal court into the Treasury of the United States.

CONCLUSION

For the foregoing reasons, as supported in the brief hereto annexed, petitioner respectfully submits that the petition for writ of certiorari should be granted.

STEPHEN J. ROTH,
Attorney General,

EDMUND E. SHEPHERD,
Solicitor General,

ARCHIE C. FRASER,
Assistant Attorney General,

State Capitol,
Lansing 2, Michigan

JULIUS H. AMBERG,
Special Assistant Attorney General,

500 Michigan Trust Building,
Grand Rapids 2, Michigan

Attorneys for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1948

No.————————

STEPHEN J. ROTH, Attorney General, Successor to EUGENE F. BLACK, Attorney General, in the name and on behalf of the People of the State of Michigan,

Petitioner,

vs.

PRESTON DELANO, Comptroller of the Currency of the United States of America, and

JOSEPH T. CONNOLLY, as Receiver of the First National Bank—Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Right to Seek Certiorari in the Alternative

While petitioner is also appealing to this Court and believes that under Title 28, U.S. Code, Sec. 1254(2), as revised by the Act of June 25, 1948, this Court has jurisdiction to entertain such appeal, this Court may determine otherwise.

The present section permitting appeals is substantially the same as Sec. 240 of the Judicial Code (Title 28, U.S.

Code, Sec. 347, before its recent revision). See reviser's notes to present Sec. 1254. Under the present law, as under the former, an appeal precludes review by certiorari. Hence, if the appeal properly lies, the present petition for certiorari must be denied.

However, if it be determined that the appeal fails for want of jurisdiction, then it is clear that this Court may grant certiorari if application therefor was made within the time limited. *Bradford Electric Light Co. v. Clapper,* 284 U.S. 221.

It is requested that this petition for certiorari be held in abeyance pending determination of the jurisdiction of this Court on the appeal, as petitioner does not have the privilege, granted in appeals to State Courts, of having his appeal, if improvidently taken, regarded as a certiorari petition. Title 28, U.S. Code, Sec. 2103, as revised.

Declaratory Judgment An Immaterial Factor

This Court, in some declaratory judgment cases, may be disinclined to grant certiorari because the questions presented are not clearly defined, further facts are required, or the dismissal of the action had been in the exercise of the lower Court's discretion.

No such situation here exists. The Court below based its decision solely on the merits, holding that the Michigan escheats law is invalid as interfering with the liquidation of a national bank under the National Bank Law (R. 100). The facts are clearly stated in plaintiff's petition in the District Court and admitted by motion to dismiss, viz.:— First National Bank—Detroit since 1933 has been in liqui-

dation under receivership (R. 2-4). Liquidation dividends have been declared and checks issued therefor at intervals from 1933 to 1942, aggregating 107.565% (R. 5). A great number of dividend checks could not be delivered on validly proven claims, or, if so delivered, have not been cashed, the persons entitled thereto having abdandoned the same for seven years (R. 4-5, 12), and the defendant Receiver has failed and refused to make report thereon under the Michigan escheat law (R. 11-13). A clear-cut issue is therefore presented, viz.: Is the Michigan law requiring report and payment to the State Board of Escheats invalid as applied to national banks in liquidation?

Earlier Decisions in the Court Below

Of course this Court is not bound by decisions of the Circuit Court of Appeals. Neither are the earlier cases otherwise binding; nor did defendant Connolly so plead (R. 64-65).

Prior suits have been brought by then Attorneys General of Michigan against the Comptroller and the then receiver of this same bank, which suits related to dormant deposits in the bank *where the depositor had failed to present claim.* The first of these was based on the Michigan law prior to the amendment presently involved. *Starr v. O'Connor,* 118 F.2, 548 (decided March 14, 1941), certiorari denied 314 U.S. 695. The second related to the Michigan law here involved, but likewise covered deposits where no claim had been filed by the depositor. *Rushton v. Schram,* 143 F.2, 554 (decided May 31, 1944). A second appeal of the first case related to the Michigan law involved herein, but likewise to deposits upon which no claim had been filed. *Starr v. Schram,* 143 F.2, 561 (decided May 31, 1944). The Court below ruled against Michigan's claims in these prior suits.

In the present case the State of Michigan claimed applicability of its escheat laws to deposits in the bank where the depositors had proven claims but thereafter had not been located to receive liquidation dividend checks or, if they had received such checks, had failed to cash the same for seven years or more (R. 5, 12-13). At the end of the opinion below (R. 101) the Court recognized this difference from the prior suits, but held it immaterial.

When escheat is sought with respect to deposits where the depositor has never filed claim, it may well be argued that the State law does conflict with the National Bank Law (Title 12, U.S. Code, Sec. 194), which requires the Comptroller to "make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction", and which further requires that "the remainder of the proceeds, if any, shall be paid over to the shareholders" of the bank.

Thus a non-proven claim may be foreclosed and payments on proven claims thus augmented or, if a surplus results, the amount otherwise payable on an unproven claim may go to shareholders. This would be analogous to distribution in bankruptcy and equity receiverships. The National Bank Law, in the case of unproven claims, may thus decree a tontine right for the benefit of proven claims and shareholders and foreclose the State's right to succeed to unproven abandoned claims. This may be the correct basis for the decisions of the Court below in the earlier cases relating to unproven claims. It was the basis of denying escheat with respect to unproven claims in the case of *In re Commercial National Bank*, 45 Fed. Supp, 482 (E.D. Pa.), affirmed on opinion below 134 F.2, 172 (C.C.A. 3).

The Decision Below Is Erroneous

The Court below held, however (R. 101), that the fact that the present case involves proven claims does not distinguish it from the prior cases in that Court of unproven claims. But Sec. 194 of the National Bank Law does not prescribe a tontine right whereby funds payable on proven claims, later abandoned, go to augment payments to other claimants or to shareholders. Cf. *Provident Institution for Savings v. Malone,* 221 U.S. 660, 665, and *Security Savings Bank v. California,* 263 U.S. 282, 286. Payments, by the law, must be made ratably on proven claims. *Merrill v. National Bank of Jacksonville,* 173 U.S. 131, 143; *American Surety Co. v. Bethlehem National Bank,* 314 U.S. 314, 317. The respondent has never claimed otherwise, but merely that such money must be held indefinitely in the United States Treasury until the claimant appears, if ever, the United States keeping the same if the claimant never appears. No federal law provides for court proceedings and publication of notice to locate a disappeared claimant or his successors.

The National Bank Law (Sec. 194) requires payment on proven *claims,* not necessarily to the *claimant.* Thus a successor to an original claimant, by assignment, attachment, subrogation, or administration of his estate, is held entitled to stand in the original depositor's shoes. *Earle v. Conway,* 178 U.S. 456 (attachment of deposit in insolvent national bank); *American Surety Co. v. Bethlehem National Bank,* 314 U.S. 314 (subrogation to depositor in insolvent national bank); see also *Provident Institution for Savings v. Malone,* 221 U.S. 660, 665, and *Anderson National Bank v. Luckett,* 321 U.S. 233, 252.

The State has sole power over abandoned property just as it does over other transfers and devolution of property (*Anderson National Bank v. Luckett*, 321 U.S. 233, 240-241, 248) and hence proper escheat laws apply to banks, whether State or national. *Provident Institution for Savings v. Malone, supra; Anderson National Bank v. Luckett, supra; Security Savings Bank v. California, supra.*

Nor does the fact that insolvent national bank funds are paid to the Comptroller and by him covered into the Treasury (Sec. 92 of the National Bank Law) mean that the escheat law is repugnant to the federal law. In *United States v. Klein*, 303 U.S. 276, the Pennsylvania escheat law was held applicable to funds deposited in a federal court suit, although the same had been covered into the Treasury as required by federal statute.

No valid reason exists, or was even suggested by the Court below, why the Michigan escheat law, in the case of a proven claim, should not apply to national banks, whether closed or open, as this Court has held subrogation, attachment, and other assignment and devolution to apply, or in what respect the same would be repugnant to the National Bank Law. The Michigan law does not infringe the National Bank Law, but is impartial, applying to all banks and other depositories without discrimination as to national banks. The bank and its receiver should perform their duty and pay the abandoned deposits to the State of Michigan, to be held for the depositors or their successors if ascertained. Cf. *Anderson National Bank v. Luckett*, 321 U.S. 233, 248-249, 252.

An important and substantial question is presented. Unless the Receiver can be required to make report to the State of Michigan, the State, not knowing the names of depositors or the amounts abandoned, cannot proceed with administration of depositors' estates or other proceedings

permitted by the Michigan law, in order to have the money paid to the persons, entitled thereto if they can be ascertained.

The Receiver did not claim below that the Michigan statutory procedure violated due process or amounted to a forfeiture instead of a true escheat, such as existed in *First National Bank of San Jose v. California*, 262 U.S. 366. Even if such question had been raised as to the Michigan law here involved, the Michigan law is a proper one. While there are presumptions of death or abandonment after seven years, these are rebuttable and the depositor or his successors may *at any time* in the future recover the fund from the State (Sections 9b, 10, 13, 13a, 22; R. 28-37). Service by publication is required if the depositor or his heirs cannot be located for service (Sections 9b, 10a; R. 28, 30). Full indemnity is given to the depository which makes payment to the State as to claims of the depositor, his heirs, holders for value and assigns (Sec. 23; R. 38). The provisions of the Michigan law more liberally protect the depositor and the bank than those approved in *Anderson National Bank v. Luckett*, *supra*, and *Security Savings Bank v. California*, *supra*. Report is required (Sections 6, 6a; R. 21-23), as permitted by the *Anderson* case (p. 252). This, of course, is essential in order to permit the State to proceed further.

Minor Issues

The Court below assumed such issues in plaintiff's favor but did not decide them (R. 100). They should be decided in plaintiff's favor.

The Receiver claimed the District Court had no jurisdiction over the subject matter (R. 64). Of course a suit concerning a claim against an insolvent national bank is a case for winding up the affairs of the bank, of which the District Court was given jurisdiction under Sec. 24 of the

Judicial Code (Title 28, U.S. Code, formerly Sec. 41(16), now revised as Sec. 1348). See *International Trust Co. v. Weeks*, 203 U.S. 364, and the cases above cited, where suits with respect to claims were entertained against bank receivers in the District Courts in which the banks were located.

Defendant claimed (R. 64-65) that suit could not be brought against the Receiver because, under Sections 192 and 194 of the National Bank Law, the receiver pays the money to the Comptroller and the latter pays the dividend. Connolly, at the time of suit, was alleged and admitted to be the Receiver (R. 3-4, 72). Suits may be brought against receivers with respect to claims against a national bank, even though the Comptroller is the one to pay the dividend and is not sued. *Case v. Bank*, 100 U.S. 446; *Armstrong v. American Exchange National Bank*, 133 U.S. 433; *Earle v. Conway*, 178 U.S. 456; *Merrill v. National Bank of Jacksonville*, 75 Fed. 148 (C.C.A. 5), affirmed without discussing the point, 173 U.S. 131; *American Surety Company v. Bethlehem National Bank*, 314 U.S. 314.

While two of three judges of the Court below, in one of the earlier cases, *Rushton v. Schram*, 143 F.2, 554, held in a case involving unproven claims that the Michigan law here involved was not retroactive, this was not only contrary to the Michigan Supreme Court decision in *Evans Products Co. v. State Board*, 307 Mich. 506, but was abandoned in substance when the entire Court, in *Starr v. Schram*, 143 F.2, 561, and in the instant cause, placed the decision solely on the ground that the Michigan law constituted an unlawful interference with a national bank in liquidation. In any event, it is not a retroactive application of the Michigan 1941 law to apply it to antecedent facts (part of the seven years' abandonment of proven claims). *Cox v. Hart*, 260 U.S. 427, 435. In *Provident Institution for Savings v. Malone, supra, Anderson National*

Bank v. Luckett, supra, and *United States v. Klein, supra,* escheat laws passed or amended after all or a part of the dormancy period were held properly to embrace such prior periods.

Hence minor questions, all of which should be decided in plaintiff's favor and which the Court below assumed in plaintiff's favor, should not prevent review of the chief meritorious federal question of whether the escheat law, as applied to proven but abandoned claims against national banks in liquidation, unlawfully interferes with such liquidation and is repugnant to the National Bank Law.

Respectfully submitted,

STEPHEN J. ROTH,
Attorney General,

EDMUND E. SHEPHERD,
Solicitor General,

ARCHIE C. FRASER,
Assistant Attorney General,

State Capitol,
Lansing 2, Michigan

JULIUS H. AMBERG,
Special Assistant Attorney General,

500 Michigan Trust Building,
Grand Rapids 2, Michigan

Attorneys for Petitioner

INDEX

Subject Index

	Page
The Suit Is Not Moot	1
No Settlement Agreement Disposed of This Suit	4
No Prior Suit Has Settled the Present Question	5
The Proper Party Defendant Is Before the Court	5
Conclusion	8
Appendix	13

Citations

Cases:

American Loan & Trust Co. v. Grand Rivers Co., 159 Fed. 775 (W.D. Ky.)	7
Anderson National Bank v. Luckett, 321 U.S. 233	7, 8
First National Bank v. Missouri, 263 U.S. 640	8
McClellan v. Chipman, 164 U.S. 347	8
National Bank v. Commonwealth, 9 Wall. 353	8
Prigg v. Pennsylvania, 16 Peters 539	8
Starr v. O'Connor, 118 F. 2, 548	5, 6
United States v. Klein, 303 U.S. 276	7

Statutes:

Title 28, U.S. Code Sections 2201-02	2, 4
Act 329 of the Public Acts of Michigan, 1947	1

Treatise:

Borchard, Declaratory Judgments, page 172	2

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1948

No. 553

STEPHEN J. ROTH, Attorney General, Successor to EUGENE F. BLACK, Attorney General, in the name and on behalf of the people of the State of Michigan,

Petitioner,

vs.

PRESTON DELANO, Comptroller of the Currency of the United States of America, and

JOSEPH T. CONNOLLY, as Receiver of the First National Bank—Detroit, a National Banking Association, and as Detroit Representative, Comptroller of the Currency of the United States of America,

Respondent.

REPLY BRIEF OF PETITIONER IN SUPPORT OF PETITION FOR CERTIORARI

A brief reply is required because respondent, in his anxiety to prevent review, has brought up matters not of record and not pleaded or argued below. He fears review of the decision which in effect permits the United States, rather than a State, to escheat deposits due upon proven claims against national banks in liquidation.

The Suit Is Not Moot

Now for the first time respondent claims as a defense that by Act No. 329 of the Public Acts of Michigan for 1947 (after the institution of this suit) the State, in enacting a

new code of escheats, repealed the statute here involved, although expressly providing (Sec. 65) "that no pending suit or proceeding shall abate or be in any way affected by such repeal".

To state this saving clause is sufficient to end the question of "mootness". Declaratory judgment suits are, of course, "suits or proceedings" and by the express terms of the federal statute have the force of final judgments subject to review, and in such a suit, after judgment and after reasonable notice and hearing, further relief may be granted under the statute without further suit (Title 28, U.S. Code, Sections 2201-2202).

This would be true even if the federal statute did not expressly so provide. As stated in Borchard, Declaratory Judgments, page 172:

> "The declaration is an authoritative adjudication and guide to conduct, and rarely, so far as records disclose, has it become necessary again to invoke the aid of the court to carry a declaratory judgment into forceful effect. Whether or not the original declaratory order or decree reserves the liberty to apply for further relief, if necessary, such liberty is always implied and the American statutes make special provision for it."

Aside from the fact that in the pending suit, under the Michigan statute here involved and the federal statute, full relief can be given, it is clear that, even if it were necessary to institute a new suit under the new Michigan code (because the receiver or the Comptroller refused to abide by the decision of this Court), this Court's determination would still be controlling of suit under the new code. *The decision below was not based on any particular wording*

of the Michigan law or on alleged inapplicability thereof, but was on the square ground (R. 100) that the Michigan law unlawfully interfered with the liquidation of a national bank under federal law. A decision here affirming the court below would make void not only the Michigan statute here involved but the new Michigan code and any otherwise valid escheat law of any State which purported to apply, among other things, to national banks in liquidation. A decision here reversing the court below, however, would validate not merely the law here involved but also the new Michigan escheat code and valid laws of all other States.

The new Michigan code does not vary from the law here involved in its applicability to all banks and receivers; and respondent has failed to point out in what way material to the questions here at issue it differs from the former law. It does not differ.

The chief meritorious question here is: Can the State of Michigan, by an otherwise valid escheat law, obtain escheat of proven claims against national banks in liquidation, or do the funds remain indefinitely in the United States Treasury because the State law is invalid as repugnant to the federal law?

Respondent now claims (Brief, p. 6) that the validity of the Michigan law was not discussed below. However, among other places, respondent in the court below stated:

> "What appellant seeks would intrude upon the provisions of the National Bank Act." (Defendant's reply brief in Court of Appeals, p. 4)

We agree that this is the main issue. It is the issue upon which the Court of Appeals decided the case.

The present controversy is actual, immediate and real and neither academic nor moot. Respondent never claimed otherwise until his brief here in opposition to certiorari, and the court below did not so find in its decision on the merits seventeen months after the passage of the new Michigan code.

Far from being moot, the present suit is the indispensable step crossing the threshold of enforcement of State escheat laws. The respondent refuses to make report of the amounts of proven deposits unclaimed and the names of the depositors (R. 13). It is the rest of the procedure to collect which becomes moot, if the State law is held invalid, in that no further action can be taken without such records. If, on the other hand, the law is held to be valid, not only will the reports be obtained but the declaratory judgment law permits further action in this suit to collect the funds (Title 28, U.S. Code, Sections 2201-2202).

No Settlement Agreement Disposed of This Suit

Respondent seeks to prevent review by appending to his brief a settlement agreement of prior suits involving the entirely different question of claims which had been abandoned and not proved by the claimants. No settlement agreement was pleaded (R. 64-65), nor is the agreement in the record below or in any prior proceedings in this Court. An attempt in the court below to prejudice the court by a document referring to and quoting from the settlement agreement was stricken from the files (R. 97), "for the reason that it carries beyond the record in the case and contains argumentative matter not presented consistently with the rules of this court". It should likewise be stricken here.

If this Court cares to look at all at this improperly presented agreement, it will be seen at once that it only settled claims on dormant unproven deposits and not the right of the State to succeed to proven claims later abandoned, which is the matter now at issue for the first time.

No Prior Suit Has Settled the Present Question

Although respondent did not plead *res adjudicata* nor did the court below so hold, respondent nevertheless contends that prior suits in the Court of Appeals decided the present question, and appends to his brief copy of prayers in the former suits. He neglects to inform the Court that the only deposits involved in the former suits, as made clear by the petitions therein, were those upon which no claims had been filed, while those in the present suit are those upon which claims were proved but not later collected for seven years by the depositors (R. 5, 12-13), as the court below pointed out (R. 101).

We quote in the appendix the fact averments in the prior suits as to the deposits with respect to which escheat was then sought. The court made this distinction clear, not only in the instant cause but in *Starr v. O'Connor,* 118 F. 2, 548, 550.

We refer also to our brief in this Court in case No. 566 in opposition to appellee's motion to dismiss (pp. 1-4).

The Proper Party Defendant Is Before the Court

Respondent now claims that the Comptroller of the Currency (who was dismissed from the present case because not a resident of the district) is a necessary party; and this

in spite of the fact that counsel for respondent obtained his dismissal as an unnecessary party in an earlier case. *Starr v. O'Connor*, 118 F. 2, 548, 550.

It is clear law, established by a long line of decisions, that a suit to enforce a claim against a national bank in liquidation may be brought against the receiver without joining the Comptroller. Such cases are cited in our original brief in support of certiorari, page 16, and our brief in opposition to motion to dismiss the appeal in Docket No. 566, page 10, and we shall not repeat them here.

Respondent seeks to rely on a self-serving statement of the Comptroller in a report to Congress that the receivership was closed, and claims the receiver therefore cannot be sued. However, petitioner in his petition alleged defendant Connolly to have been appointed and to be acting as receiver (R. 3-4), which averment was admitted by defendant's motion to dismiss. Although in an affidavit annexed to the motion respondent claimed that the receivership was "deemed technically closed" (R. 70), the same affidavit discloses (R. 72) that defendant Connolly was given a commission as receiver "to act in such incidental cases that might require action by a receiver". This is one of such cases. Furthermore, after this suit was started, Connolly, as receiver, entered into a stipulation permitting him to send records to the Comptroller without prejudice to the issues involved (R. 48).

If respondent had had any confidence in the present claims that this suit had been settled by prior agreement, that it is moot by reason of a change in the Michigan statute, or that an admitted receiver is not a receiver, he would have sought summary judgment below and not sought and

obtained decision in his favor on the merits, *viz.*, that the Michigan law is invalid as intruding upon the National Bank Law.

Respondent even claims that the present suit amounts to one against the United States, disregarding the cases cited by us and innumerable other ones sustaining suits on claims against bank receivers. The funds awaiting payment on proven claims do not belong to the United States. Congress has no power, even had it wished, to declare escheat thereof to the United States. *Anderson National Bank v. Luckett*, 321 U.S. 233, 240-241, 248; *American Loan & Trust Co. v. Grand Rivers Co.*, 159 Fed. 775 (W.D. Ky.). The fact that the funds may be paid into the United States Treasury does not prevent escheat under a State law. *United States v. Klein*, 303 U.S. 276. As we have pointed out, moneys payable on proven claims do not augment payments otherwise due on other claims. The same will lie in the Treasury indefinitely unless the State is held validly to succeed to proven claims under its right to control the devolution of property and unless the State can take action to discover the claimants or their successors. Thus, although the United States has no right to keep the funds and does not claim the right, respondent nevertheless seeks, in effect, to have the money escheat to the United States, by contending that this is a suit against the United States and not properly brought against the receiver.

Conclusion

It is unfortunate that we have been compelled to take the time of this Court to remove red herrings from the trail. They did not divert the court below from the one meritorious issue, *viz.*, is an otherwise valid State escheat law invalid in its application to a national bank in liquidation with respect to proven claims when the claimant cannot be found for seven years or more? The court held that the State law was an unlawful interference.

As stated in *Prigg v. Pennsylvania*, 16 Peters 539, 617-618, a State does not have a right to interfere with a federal regulation on a particular subject "if Congress have a constitutional power to regulate a particular subject". Congress has no power to regulate escheats. There is therefore no invalid interference.

The National Bank Law does not purport to cover the matter of succession, by assignment, escheat or otherwise, to proven claims against banks in liquidation. Otherwise valid escheat laws have been held proper in their application to operating national banks. *Anderson National Bank v. Luckett*, 321 U.S. 233.

That the bank is in liquidation makes no difference. The present case is merely an example of the general principle that national banks are subject to State laws which do not interfere with the purpose of their creation or impair their efficiency as federal agencies. *National Bank v. Commonwealth*, 9 Wall. 353; *McClellan v. Chipman*, 164 U.S. 347; *First National Bank v. Missouri*, 263 U.S. 640, 656.

The decision in the court below was contrary to decisions of this Court and should be reviewed here, either by appeal

in Docket No. 566 or by granting of certiorari. We are certain that the Court's attention will not be diverted from the issue presented by extraneous matters not involved, not of record, not presented below, or of no valid consequence.

Respectfully submitted,

Stephen J. Roth,
Attorney General,

Edmund E. Shepherd,
Solicitor General,

Archie C. Fraser,
Assistant Attorney General,

State Capitol,
Lansing 2, Michigan,

Julius H. Amberg,
Special Assistant Attorney General,

500 Michigan Trust Building,
Grand Rapids 2, Michigan,

Attorneys for Petitioner.

APPENDIX

APPENDIX

Averments of Petition in Starr v. O'Connor as to Deposits Involved

(R. Page 5 in That Suit)

"That your petitioner is informed and verily believes that the records of the defendant disclose that there are approximately one hundred twenty-five thousand one hundred six (125,106) individual deposit balances, totalling Two Million Thirty-eight Thousand Two Hundred Seventy-one Dollars and Forty-eight cents ($2,038,271.48), which appeared as liabilities upon the books of the First National Bank-Detroit as of its suspension on the 11th day of February, A.D. 1933, upon which no claims have been presented or filed with said Receiver or his predecessor, or upon which balances no demands have been made for payment by the persons who made such deposits, prior to the date hereof."

Averments of Petition in Rushton v. Schram as to Deposits Involved

(R. Page 7 in That Suit)

"That your petitioner is informed and verily believes that the records of the defendant disclose that there are approximately one hundred fifteen thousand five hundred and forty-six (115,546) individual deposit balances, totalling One Million Twenty-eight Thousand One Hundred Seven Dollars and Seventy-six Cents ($1,028,107.76), which appeared as liabilities upon the books of the First National

Bank-Detroit as of its suspension on the 11th day of February, A.D. 1933, upon which no claims have been presented or filed with said Receiver or his predecessor, or upon which balances no demands have been made for payment by persons legally entitled to make claim for same, prior to the date hereof."

INDEX

	Page
Summary Statement of Matter Involved	1-5
Counter-Statement of Questions Presented	6-7
The Instant Proceedings Are Moot	8-10
No New and No Important Principles Not Previously Established Are Involved Here	10-12
There Is No Conflict Here With Any Decision of This Court nor Between Any of the United States Courts of Appeals	12-14
Absence of Indispensable Party Prevents An Actual Controversy Here	14-16
Conclusion	16
Appendix	17-23
Starr v. O'Connor, infra, main prayers	17
Starr v. Rushton, infra, main prayers	17-18
Section 65, Act 329 of the Public Acts of Michigan for 1947; Mich. Stats. Ann., sec. 26.1053(65)	18
Settlement agreement executed after Court of Appeals decisions in *Rushton v. Schram,* infra, and *Starr v. Schram,* infra	18-23

CITATIONS

Cases

	Page
Aetna Life Ins. Co. v. Haworth (1937), 300 U. S. 227	10
Anderson National Bank v. Luckett (1944), 321 U. S. 233	12
Auten v. United States National Bank of New York (1899), 174 U. S. 125	13
Bejger v. Zawadski (1930), 252 Mich. 14, 232 N. W. 746	8
Black v. Delano (C. A. 6, 1948), 170 F. 2d 966	2
Burnell v. United States (1909), 44 Ct. Cl. 535	13
Chemical National Bank v. Armstrong (C. A. 6, 1893), 59 F. 372; afd., 176 U. S. 618	13
Cook County National Bank v. United States (1883), 107 U. S. 445	11
Davis v. Elmira Savings Bank (1896), 161 U. S. 275	11
Detroit Trust Co. v. Allinger (1935), 271 Mich. 600, 261 N. W. 90	8
Drackett Co. v. Chamberlain Co. (C. A. 3, 1936), 81 F. 2d 866; app. dis. and cert. den., 299 U. S. 503	15
Easton v. State of Iowa (1903), 188 U. S. 220	11
Evans Products Co. v. State Board of Escheats (1943), 307 Mich. 506, 12 N. W. 2d 448	8
Ex parte Chetwood (1897), 165 U. S. 443	13, 14
Ex parte McCardle (1896), 7 Wall. 506	8
Flanigan v. Sierra County (1905), 196 U. S. 553	8
Fletcher v. Jones (C. A., D. C., 1939), 105 F. 2d 58; cert. den., 308 U. S. 555	3n
Gnerich v. Rutter (1924), 265 U. S. 388	15
Hanes & Co. v. Wadey (1889), 73 Mich. 178, 41 N. W. 222	9
Hardee v. Washington Loan & Trust Co. (C. A., D. C., 1937), 91 F. 2d 314	3n

	Page
Hargrove v. American Cent. Ins. Co. (C. A. 10, 1942), 125 F. 2d 225	4
Haskins Bros. & Co. v. Morganthau (C. A., D. C., 1936), 85 F. 2d 677; cert. den., 299 U. S. 588	13
Hooey v. Wilson (1870), 9 Wall. 501	15
In re Escheat of Moneys, etc. (1948), 358 Pa. 133, 57 A. 2d 256	14
Johnson v. State of Maryland (1920), 254 U. S. 51	12
Knickerbocker Ice Co. v. Stewart (1920), 253 U. S. 149	9
Maricopa County v. Valley National Bank (1943), 318 U. S. 357	13
Maryland Casualty Co. v. Pacific Coal & Oil Co. (1941), 312 U. S. 270	10
Meyers v. Barlock (1917), 281 Mich. 629, 275 N. W. 656	8
Minnesota v. Northern Securities Co. (1902), 184 U. S. 199	15
O'Connor v. Rhodes (C. A., D. C., 1935), 79 F. 2d 146	13
Richmond v. Irons (1887), 121 U. S. 27	16
Richmond, F. & P. Ry. Co. v. McCarle (C. A., D. C., 1932), 62 F. 2d 203; cert. den., 288 U. S. 615	13
Rushton v. Schram (C. A. 6, 1944), 143 F. 2d 554	2, 5, 7, 11, 12
Sells v. Defense Plant Corp. (1946), 295 N. Y. 227, 66 N. E. 2d 289	12
Sinclair Refining Co. v. Burroughs (C. A. 10, 1943), 133 F. 2d 536	4, 9
Starr v. O'Connor (C. A. 6, 1941), 118 F. 2d 548	2, 11
Starr v. Schram (1941), 314 U. S. 695	2, 11
Starr v. Schram (C. A. 6, 1944), 143 F. 2d 561	2, 5
Texas & Pacific Ry. Co. v. Pottorff (1934), 291 U. S. 245	3n

Page

United Public Workers v. Mitchell (1947), 330 U. S. 75 10
United States v. Alaska Steamship Co. (1920), 253 U. S. 113..... 9
United States v. California Co-Op. Canneries (1929), 297 U. S. 553..... 5n
United States v. Klein (1938), 303 U. S. 276..... 12, 14
United States v. Scharton (1932), 285 U. S. 518..... 9
United States v. Weitzel (1918), 246 U. S. 533..... 14
Warner Valley Stock Co. v. Smith (1897), 165 U. S. 28 15
Webster v. Fall (1925), 266 U. S. 507..... 15
White v. Knox (1884), 111 U. S. 784..... 12, 16

Texts

Borchard, Declaratory Judgments, p. 60..... 9

Statutes

Act 170 of the Public Acts of Michigan for 1941.... 4, 8
Act 238 of the Public Acts of Michigan for 1897; secs. 13455 to 13477 of Mich. Comp. Laws 1929..... 3, 8
Act 329 of the Public Acts of Michigan for 1947, sec. 65; Mich. Stats. Ann., sec. 26.1053(65).....4, 8, app.
Title 12, U. S. Code, sec. 192; R. S., sec. 5234..... 13, 15
Title 12, U. S. Code, sec. 193; R. S., sec. 5235..... 13
Title 12, U. S. Code, sec. 194; R. S., sec. 5236..... 13, 15
Title 28, U. S. Code, sec. 2201; formerly Judicial Code, sec. 274-D..... 10

In the

Supreme Court of the United States

OCTOBER TERM, 1948

No. 553

STEPHEN J. ROTH, Attorney General, Successor to EUGENE F. BLACK, Attorney General, in the name and on behalf of the People of the State of Michigan,
Petitioner,

vs.

PRESTON DELANO, Comptroller of the Currency of the United States of America, and
JOSEPH T. CONNOLLY, as Receiver of the First National Bank-Detroit, a national banking association, and as Detroit Representative, Comptroller of the Currency of the United States of America,
Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SUMMARY STATEMENT OF MATTER INVOLVED

This case is the latest in a series of attempts, over the past eleven years, by various Attorney Generals of Michigan, to obtain a declaration, in general terms, that specifically named Michigan escheat acts are "applicable" in the liquidation of First National Bank-Detroit, an insolvent national banking association (R. 15). *Four times* the Court of Appeals for the Sixth Circuit has held they

do not apply (R. 98-101). *Starr v. O'Connor* (1941), 118 F. 2d 548; *Rushton v. Schram* (1944), 143 F. 2d 554; *Starr v. Schram* (1944), 143 F. 2d 561; *Black v. Delano* (1948), 170 F. 2d 966 (R. 98). Further, this Court has denied two petitions of the Attorney General for certiorari. *Starr v. Schram* (1941), 314 U. S. 695. In the last three cases, including this one, *the same act* has been before the court. Moreover, in the first case it was made a part of the Court of Appeals record during the pendency of an application for rehearing, and was in the record before this Court on the certiorari petitions.

On each attempt, the Attorney General has argued that something new is involved. This is not the fact. The main prayers of the instant action (R. 15) are identical, in substance, with those of the Attorney General in each of the previous declaratory judgment petitions. For purposes of comparison, the previous prayers are set forth in the appendix to this brief. No new parties have been added here, no new statute is relied upon and no new principles of law are involved. As the Court of Appeals has said in its opinion here, "their present battle is fought upon essentially the same legal grounds upon which former contests have been waged" (R. 100-101).

A short summary of this protracted escheat litigation is given in respondent's statement opposing jurisdiction on petitioner's appeal herein. It will not be repeated further, except as seems unavoidable in drawing particular attention to matters important to the points advanced in this brief.

The instant declaratory judgment action was filed on June 25, 1946 (R. 1), just five days after the date of the letter of demand on which it is alleged to be based (R. 39-40). This was approximately two years after the bank liquidation had been concluded and the receivership

closed[1] (R. 70). Petitioner, apparently realizing the necessity of so doing, made the Comptroller of the Currency a party defendant (R. 2). Service was not and could not be made on the Comptroller in Michigan (R. 62-63), hence, on his special appearance and motion, the action was dismissed as to him (R. 81). No appeal was taken from this dismissal, and he has not been before the courts in this case (certiorari petition, p. 3).

The receiver of First National Bank-Detroit moved to dismiss the action as to him because no cause of action was stated against him, and upon jurisdictional grounds (R. 64-65). In support thereof, respondent urged that the state act upon which the action is founded is, and has been repeatedly held to be, not applicable in the circumstances here presented; that, by law, respondent has no custody of or control over the funds sought, and no complete records thereof; that, in the absence of the Comptroller of the Currency, the indispensable party, the court has no jurisdiction over the subject matter; that this is a suit against the United States, commenced without its consent; and that the state act, by its own terms, does not apply. Respondent's motion was granted (R. 81).

After submission of the case to the district court for its decision on the motions, the Michigan legislature enacted a new code of escheats, and expressly repealed "Act No. 238 of the Public Acts of Michigan of 1897, being sections 13455 to 13477, both inclusive, of the Compiled Laws

---

[1] See the Comptroller of the Currency's eighty-second annual report to Congress, for 1944—table 45 beginning at page 164, with the First National Bank-Detroit receivership covered in item 2299 (p. 169) and in note 10. This Court may take judicial notice thereof. *Texas & Pacific Ry. Co. v. Pottorff* (1934), 291 U. S. 245, 254; *Hardee v. Washington Loan & Trust Co.* (C. A., D. C., 1937), 91 F. 2d 314, 315; *Fletcher v. Jones* (C. A., D. C., 1939), 105 F. 2d 58, 61-62, cert. den. 308 U. S. 555.

of 1929, and all amendments thereto," which includes Act 170 of the Public Acts of 1941. The saving clause is limited to a "pending suit or proceeding." See section 65 of Act 329 of the Public Acts of Michigan for 1947 (Mich. Stats. Ann., sec. 26.1053(65)), set forth in the appendix.

In respondent's view, this declaratory action was not such a "suit or proceeding" as was saved from the repeal. A declaratory action is neither legal nor equitable but purely procedural and advisory. *Hargrove v. American Cent. Ins. Co.* (C. A. 10, 1942), 125 F. 2d 225, 228. It merely declares rights which as a result thereof may be enforced by a subsequent action. *Sinclair Refining Co. v. Burroughs* (C. A. 10, 1943), 133 F. 2d 536, 538. If, in this proceeding, such rights were decided in favor of petitioner, he would then as a matter of law have to institute an action to enforce them. Further, he admits this to be true. In the present case, such action would be too late as it would not have been pending when the escheat act was repealed. This clearly illustrates that the petitioner is seeking a purely abstract or academic ruling, namely, to have rights declared under a repealed act under which the same could not be enforced. It may be noted, alternatively, that if the alleged saving clause was intended to apply to the instant action, it is the only matter thus saved. No other action or proceeding is pending. Hence, it is hardly a matter of general interest to proceed with a declaratory opinion which involves no pending cause.

The Court of Appeals for the Sixth Circuit affirmed the district court's order of dismissal as to respondent, holding, *for the fourth time,* that the Michigan escheat acts, here in question, *do not apply* in the circumstances presented here, this "upon the same principles and au-

thority'' fully discussed in its previous opinions (R. 100). It did not pass upon any other question presented, including the absence of the Comptroller of the Currency as a party (R. 100).

This entire escheat controversy was finally and completely disposed of, respondent believes, by a settlement agreement executed following the Court of Appeals decisions in *Rushton v. Schram, supra,* and *Starr v. Schram, supra,* and filed with the district court in the *Rushton* case. It is not a part of the printed record in this case, since it is an affirmative defense respondent has not been called upon to make. However, it is referred to in a pleading previously filed with this Court, of which this Court may take notice,[2] the possibility of such having been given as a reason, along with the fact that the Attorney General had obtained an extension in the *Rushton* case, for the receiver's application for an extension of time to petition for certiorari in the *Starr* case. Further, the agreement, outside of a dispute as to its effect, is an undisputed fact which petitioner, upon query from the Court, would be bound to admit. It was mentioned by petitioner in his district court brief. Accordingly, the agreement is set forth in the appendix hereto for this Court's information in the event the Court agrees with respondent that it is proper to refer to it in these certiorari proceedings.

---

[2] *United States v. California Co-Op. Canneries* (1929), 297 U. S. 553.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

In view of the specific repeal of the act which petitioner seeks to have declared to be applicable, in general, here, there is a first question presented by these proceedings which petitioner has not mentioned. It is:

1. Will this Court declare the right to apply a Michigan statute which has been repealed, saving only "pending suits or proceedings," where such, if declared in favor of petitioner, could only be enforced in a subsequent suit at law or in equity, which obviously would not be a "pending suit or proceeding" at the time the repeal became effective?

It is respectfully submitted that all that is left is an abstract proposition, *that the case is moot* and that this Court will not proceed further herein.

Nor has petitioner been accurate in his statement of the questions he does mention in his petition. First, there are no such things as "deposits" in an insolvent national bank being liquidated under federal law, so there can be no question of applying any law thereto. Second, the Court of Appeals did not hold the state law "invalid." That was not discussed nor was it an issue in the case. Further, petitioner's statements of the questions are incomplete. The questions are more properly as follows:

2. Is the repealed Michigan escheat act, as amended after the date of the insolvent bank's suspension of business, applicable in the liquidation of First National Bank-Detroit, a national banking association, when the National Bank Act provides a complete and exclusive system for winding up the affairs of an insolvent national bank, including complete distribution of all of its effects?

3. Further, may such act be held applicable when the court does not have before it the Comptroller of the Currency, who is directly responsible and accountable for the winding up of the affairs of the insolvent national bank, who has custody, as the instrumentality of the federal government, of the funds sought and sole control over them, who is the only party with any duties in the distribution of those funds and the only party with complete records thereof, and who is the one and only party whose rights, duties and interests would be infringed upon by a holding that the act is applicable?

4. Will this Court undertake, at this late date, long after the closing of the receivership, to consider the same prayer for a declaration of the applicability of the same law to the same insolvent bank receivership which the Attorney General of Michigan preserved his right to ask this Court to review by certiorari in the prior case of *Rushton v. Schram, supra,* and thereafter abandoned, thus making the judgment as between the State of Michigan and the respondent final, conclusive and *res adjudicata*?

As stated, the Court of Appeals has *four* times answered question 2 in the negative. It has not passed upon question 3. Respondent respectfully submits that "No" is the proper answer to both and to question 4, that the questions present nothing new or important for decision by this Court, and that no review is called for herein. Further, to request a declaratory opinion with respect to repealed legislation, and in the absence of an indispensable party, is obviously a futile request.

THE INSTANT PROCEEDINGS ARE MOOT

In this case, petitioner asks only for a general declaration "that Act 238 of the Public Acts of Michigan for the year 1897, and the amendments thereof, being Sections 13455 to 13477, both inclusive, of the Compiled Laws of Michigan for 1929, as amended by Act 170 of the Public Acts of Michigan for 1941, is applicable to the First National Bank-Detroit, a national banking association, heretofore declared insolvent and since such insolvency liquidated," and that defendants are subject to the provisions thereof (R. 15). After submission of the dismissal motions herein, by Act 329 of the Public Acts of Michigan for 1947 [Mich. Stats. Ann., sec. 26.1053 (65)] *the Michigan legislature expressly repealed this very law,* which the Michigan Supreme Court has said was "piecemeal legislation with many apparent inconsistencies" [*Evans Products Co. v. State Board of Escheats* (1943), 307 Mich. 506, 548, 12 N. W. 2d 448, 462].

The repealing section contains a limited saving clause, providing only "that no pending suit or proceeding shall abate or be in any way affected by such repeal." "Proceeding" means no more than the suit, it being defined as any application to a court for the purpose of having matters in dispute judicially determined. *Meyers v. Barlock* (1917), 281 Mich. 629, 632, 275 N. W. 656, 657.

Unless saved, powers derived wholly from a statute are extinguished by its repeal, and all inchoate rights which might have arisen thereunder are thereby divested. *Flanigan v. Sierra County* (1905), 196 U. S. 553, 560; *Ex parte McCardle* (1869), 7 Wall. 506; *Detroit Trust Co. v. Allinger* (1935), 271 Mich. 600, 610, 261 N. W. 90, 94; *Bejger v. Zawadski* (1930), 252 Mich. 14, 19, 232 N. W. 746. A saving clause saves only what it embraces, and

is strictly construed. *United States v. Scharton* (1932), 285 U. S. 518, 521; *Knickerbocker Ice Co. v. Stewart* (1920), 253 U. S. 149, 162; *Hanes & Co. v. Wadey* (1889), 73 Mich. 178, 180, 41 N. W. 222. The saving clause here does not cover rights accrued, duties imposed, penalties or liabilities incurred, and such are not saved, if any there were. The result is that the only question petitioner asks is the only issue, if any, saved—the general question: Does the act apply? However, it has been repealed, so no matter what the answer might have been, it is of no moment now. Nor does it mean anything to declare that defendants would or would not be subject to the act, for it no longer exists. That act, no longer in existence, will support no further proceedings, such as would be necessary. *Sinclair Refining Co. v. Burroughs, supra.* If respondent has any escheat duty or obligation, it is now under a new act. To decide this litigation under the new act would be improper because the new act was enacted after the filing of petitioner's petition herein, has never been before the courts herein, and there is at present no "actual controversy" pending as to it.

Where, *as here,* because of an alteration in the subject-matter, a judgment in the case would not be decisive or controlling of acts and contested rights, but a pronouncement of academic interest only, *the case is moot. United States v. Alaska Steamship Co.* (1920), 253 U. S. 113, 116; Borchard, Declaratory Judgments, page 60. Further, no matter how convenient to petitioner a present decision on an applicability question in general might be, this Court will not pass on abstract propositions or declare, for the government of future cases, principles or rules of law which cannot affect the end result as to the thing in issue in the case before it, here the applicability of the repealed act. *United States v. Alaska Steamship Co.,*

supra, p: 116; *United Public Workers v. Mitchell* (1947), 330 U. S. 75, 89.

Moreover, under the federal declaratory judgment act (formerly section 274-D of the Judicial Code, now Title 28, U. S. Code, sec. 2201), the word "actual," as applied to the word "controversy" is one of emphasis rather than of definition. The question in each case is whether the facts alleged, under all the circumstances, show a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Maryland Casualty Co. v. Pacific Coal & Oil Co.* (1941), 312 U. S. 270, 273; *Aetna Life Ins. Co. v. Haworth* (1937), 300 U. S. 227, 239, 240. Here, not only is there now no "immediacy and reality" to the controversy, if any there ever was, but the Comptroller of the Currency, the one party with legal interests adverse to petitioner's claims, is not a party in the case.

It is respectfully submitted that the instant case is now moot. Nor, in any event, can the application of this "piecemeal legislation with many apparent inconsistencies," *which the state legislature has specifically repealed,* be a matter of any great importance so as to be a fit subject to command the attention of this Court.

NO NEW AND NO IMPORTANT PRINCIPLES NOT PREVIOUSLY ESTABLISHED ARE INVOLVED HERE

The instant case, on its so-called merits, is just a repetition of the matter that the Court of Appeals has passed on and decided previously, *three* times. No new parties are added. Petitioner here seeks one and the same declaration his predecessor Attorney Generals sought.

In substance, the prayers of the Attorney Generals in all these actions, including this one, are identical, as shown by a comparison of the main prayers of this action (R. 15) with those of *Starr v. O'Connor, supra,* and *Rushton v. Schram, supra,* set forth in the appendix hereto. As stated by the Court of Appeals, the "present battle is fought upon essentially the same legal grounds upon which former contests have been waged" (R. 100-101). In short, *this case has previously been decided, three times,* by the Court of Appeals, and two petitions for certiorari in connection with this matter have been denied by this Court. *Starr v. Schram* (1941), 314 U. S. 695.

Nor are any new principles of law invoked here. It has been repeatedly held that the National Bank Act provides a complete and exclusive system for winding up the affairs of an insolvent national bank. This includes all distribution of the effects thereof, including the distribution of dividends. *Cook County National Bank v. United States* (1883), 107 U. S. 445, 448; *Davis v. Elmira Savings Bank* (1986), 161 U. S. 275; *Easton v. State of Iowa* (1903), 188 U. S. 220. Further, if Congress has a constitutional power to regulate a particular subject and does regulate it, a state may not infringe thereon, even by way of complementary legislation. *Easton v. State of Iowa, supra,* page 237. This covers the circumstances here.

That petitioner is seeking to infringe upon the duties and interests of the Comptroller of the Currency, who is not a party before the Court, established by and to be performed under federal law, is underscored by a statement in petitioner's main Court of Appeals brief (p. 18), that, by granting the prayers of his petition, "the Receiver and the Comptroller of the Currency will be relieved from what otherwise would be an indefinite term of duty with respect thereto," referring to dividend payments.

In *Rushton v. Schram, supra* the escheat act in question here (as amended in 1941) was analyzed and held not to have nor intended to have retroactive effect so as to be applicable to the First National Bank-Detroit receivership under any view. This is also correct, under well established principles. All claims against an insolvent national bank, if petitioner is advancing one, which is denied, must be liquidated and determined, and all rights fixed, at the date of suspension of business by the bank, which was in 1933 (R. 2). Nothing subsequently done can affect, alter or create such a claim. *White v. Knox* (1884), 111 U. S. 784. Nor can infringement upon a federal function be taken to have been authorized by a state statute. *Johnson v. State of Maryland* (1920), 254 U. S. 51, 57; *Sells v. Defense Plant Corp.* (1946), 295 N. Y. 227, 235, 66 N. E. 2d 289, 291.

It is respectfully submitted that there is nothing involved here sufficient to call for a review by this Court. All applicable principles have long been settled.

THERE IS NO CONFLICT HERE WITH ANY DECISIONS OF THIS COURT NOR BETWEEN ANY OF THE UNITED STATES COURTS OF APPEALS

There is no conflict between any decision of this Court and the decision of the Court of Appeals in this and the prior escheat cases. The authorities relied upon by petitioner in the instant case are the same as those his predecessor Attorney Generals advanced in the previous cases, and which the Court of Appeals has consistently, and properly, held not to be controlling. These are, in the main, *Anderson National Bank v. Luckett* (1944), 321 U. S. 233, and *United States v. Klein* (1938), 303 U. S. 276. Nor is there nor could there be any conflicting decisions in the United States Courts of Appeals as to the applicability of a Michigan escheat statute to the insolvent First National Bank-Detroit.

In its opinion in the *Anderson National Bank* case, this Court pointed out that, in a going bank, the deposits are debtor obligations of the bank, incurred and to be performed in the state of its location. *That is not the case here.* Upon the First National Bank-Detroit being found and declared to be insolvent, custody and control of the bank assets and property passed to the federal government, in the exercise of constitutional and legal powers under federal law. Neither the federal government nor the federal officer or instrumentality, the Comptroller of the Currency, through whom the custody and control is exercised, stand in a debtor relation to anyone, and they are governed by federal law only. *Ex parte Chetwood* (1897), 165 U. S. 443; *Auten v. United States National Bank of New York* (1899), 174 U. S. 125, 141; *Chemical National Bank v. Armstrong* (C. A. 6, 1893), 59 F. 372, 375, affirmed in 176 U. S. 618; Title 12, U. S. Code, sections 192, 193, 194 (R. S., secs. 5234, 5235, 5236).

The moneys made from the liquidation of the bank assets have no situs in Michigan, and the obligations with regard to the handling and distribution thereof are performed by the Comptroller of the Currency in Washington, D. C. Title 12, U. S. Code, sec. 192 (R. S., sec. 5234). These moneys are, in fact, federal funds [*O'Connor v. Rhodes,* (C. A., D. C., 1935), 79 F. 2d 146, 151] which the federal government is bound to see are properly distributed in accordance with federal law. *Burnell v. United States* (1909), 44 Ct. Cl. 535, 548. This action is, in reality, a suit against the United States, involving a matter concerning which it has not consented to be sued. *Maricopa County v. Valley National Bank* (1943), 318 U. S. 357, 362; *Richmond, F. & P. Ry. Co. v. McCarle* (C. A., D. C., 1932), 62 F. 2d 203, cert. den., 288 U. S. 615; *Haskins Bros. & Co. v. Morganthau* (C. A., D. C., 1936), 85 F. 2d 677, cert. den., 299 U. S. 588.

United States v. Klein, supra, has been distinguished and held not applicable by the same state court, the Supreme Court of Pennsylvania, from whence it came to this Court, in circumstances, such as here, where the federal government has custody of the funds in the exercise of constitutional and legal powers under federal law and they are distributable in accordance with federal law. *In re Escheat of Moneys, etc.* (1948), 358 Pa. 133, 136, 57 A. 2d 256, 257.

ABSENCE OF INDISPENSABLE PARTY PREVENTS AN ACTUAL CONTROVERSY HERE

Beyond any question on the so-called merits, it is difficult to conceive how this Court could render any more than a purely advisory opinion, if that, in this case since it does not have before it the *only* party whose rights, duties and interests are adverse to the declaration sought by petitioner.

Under the provisions of the National Bank Act, respondent has neither custody nor control of the funds sought by petitioner, and it is money he is after. Nor, as naturally follows, does respondent have custody or control of the records as to those funds. Respondent has no duties whatsoever in the distribution of dividends from the moneys made from the liquidation of the bank's assets. *That is the function of the Comptroller of the Currency alone.* Even while a national bank receivership is still open, the receiver's functions are restricted to a liquidation of the bank's assets and an immediate payment of the moneys so made over to the Treasurer of the United States, and all this is under the complete direction and control of the Comptroller, who has the entire responsibility for winding up the affairs of the bank. *Ex parte Chetwood* (1896), 165 U. S. 443, 458; *United States v. Weitzel* (1918), 246 U. S. 533, 540; Title 12, U. S. Code, secs. 192, 194 (R. S., secs. 5234, 5236).

Petitioner, to some extent at least, realized the vital position of the Comptroller of the Currency in this matter, and named him as a party defendant (R. 2). In this petition for declaratory judgment, petitioner speaks of the checks or funds "now remaining in the possession and under the control of the said defendant Receiver *and the Comptroller of the Currency*" (R. 5, 12). He alleges there to be a duty to report where "no dealings or transactions had been had between said defendant Receiver and/or his predecessors *and/or the said defendant Comptroller of the Currency of the United States and/or his predecessors*" and the persons entitled to receive dividend checks (R. 12-13).

As the party directly charged with the duty of administering the affairs of the insolvent First National Bank-Detroit, as the party with custody and control of the funds petitioner seeks, as the sole party empowered to distribute these funds, and hence the only party who has complete records thereof, as the one party whose rights, duties and interests are being threatened with infringement, the Comptroller of the Currency is the indispensable party defendant herein. *Webster v. Fall* (1925), 266 U. S. 507; *Gnerich v. Rutter* (1924), 265 U. S. 388; *Warner Valley Stock Co. v. Smith* (1897), 165 U. S. 28; *Drackett Co. v. Chamberlain Co.* (C. A. 3, 1936), 81 F. 2d 866, appeal dismissed and cert. den. 299 U. S. 503. Even had respondent not raised the question, the courts, *sua sponte,* should inquire into the absence of the indispensable party, and petitioner cannot prevail without him before the court. *Minnesota v. Northern Securities Co.* (1902), 184 U. S. 199, 235; *Hooey v. Wilson* (1870), 9 Wall. 501.

Petitioner argues as to the right to bring an action against a receiver alone with respect to establishing claims against an insolvent national bank. However, petitioner does not seek to establish a claim against the bank. He

never was and is not a creditor of the bank. Further, as before stated, claims must be liquidated and determined and rights established as of the date of suspension of business by the bank. Nothing subsequent thereto can create a claim against the bank. *White v. Knox* (1884), 111 U. S. 784. Moreover, if petitioner had a claim against the bank, he comes much too late to establish it. The receivership has been closed since 1944 (R. 70), and claims no longer need be accepted, in fact, cannot be accepted. *Richmond v. Irons* (1887), 121 U. S. 27, 66.

At best, the absence of the Comptroller of the Currency from this action leaves but an abstract proposition upon which this Court is asked to pass.

CONCLUSION

Respondent respectfully submits that there is no valid reason for the allowance of a writ of certiorari in this case, that the circumstances presented foreclose a review herein, and that the Attorney General's petition should be denied.

Respectfully submitted,

ROBERT S. MARX,
900 Traction Building,
Cincinnati 2, Ohio;

LAWRENCE I. LEVI,

FRANK M. WISEMAN,
2443 National Bank Building,
Detroit 26, Michigan,
Attorneys for Respondent.

NICHOLS, WOOD, MARX & GINTER,
900 Traction Building,
Cincinnati 2, Ohio,
Of Counsel for Respondent.

APPENDIX

Main Prayers of Petition for Declaratory Judgment Filed in Starr v. O'Connor

3) That in accordance with Section 274-D of the Judicial Code, Section 400 U. S. C., this Honorable Court declare as follows:

a) That Act 238 of the Public Acts of Michigan for the year 1897 and amendments thereto, being Sections 13455 to 13477, both inclusive, of the Compiled Laws of Michigan for 1929, and Acts 40, 45 and 171 of the Public Acts of Michigan for 1933, are applicable to First National Bank-Detroit, a National Banking Association, now insolvent and in the process of liquidation.

b) That the defendants and each of them, their successors, attorneys, officers, agents and employees are subject to and bound by the provisions of the foregoing laws.

Main Prayers of Petition for Declaratory Judgment Filed in Rushton v. Schram

3. That in accordance with Section 274-D of the Judicial Code, Section 400 U. S. C., this Honorable Court declare as follows:

a. That Act 238 of the Public Acts of Michigan for the year 1897 and amendments thereto, being Sections 13455 to 13477, both inclusive, of the Compiled Laws of Michigan for 1929, as amended by Act 170 of the Public Acts of Michigan for 1941, is applicable to First National Bank-Detroit, a National Banking Association, now insolvent and in the process of liquidation.

b. That the defendant, his successors, attorneys, officers, agents and employees are subject to and bound by the provisions of the foregoing law.

Section 65 of Act 329 of the Public Acts of Michigan for 1947; Michigan Statutes Annotated Section 26.1053(65)

Act No. 238 of the Public Acts of 1897, being sections 13455 to 13477 inclusive of the Compiled Laws of 1929, and all amendments thereto, is hereby repealed, together with all other acts or parts of acts insofar as they conflict with or in anywise contravene any provision of this act: *Provided,* That no pending suit or proceeding shall abate or be in any way affected by such repeal, but the same shall continue in full virtue and effect, notwithstanding such repeal.

Agreement of Settlement Executed Following Court of Appeals Decisions in Rushton v. Schram and Starr v. Schram

THIS AGREEMENT entered into this 25th day of October, A. D. 1944, by and between Herbert J. Rushton, Attorney General, in the name of and on behalf of the People of the State of Michigan, hereinafter referred to as the Party of the First Part, and Joseph T. Connolly, Receiver of the First National Bank-Detroit, hereinafter referred to as the Party of the Second Part.

Witnesseth:

Whereas, Herbert J. Rushton is the presently duly qualified, elected and acting Attorney General of the State of Michigan, and is a party to this agreement in the name of and on behalf of the People of the State of Michigan; and

Whereas, Joseph T. Connolly is the presently duly qualified and acting Receiver of the First National Bank-Detroit, appointed by the Comptroller of the Currency to succeed B. C. Schram, his predecessor Receiver; and

Whereas, the party of the first part did heretofore file suit in the United States District Court for the Eastern District of Michigan, Southern Division, against B. C. Schram, predecessor Receiver of the First National Bank-Detroit, in Civil Action No. 3289, to which suit reference is hereby made, the same being dismissed by said United States District Court under an order entered on April 20, 1943, and being subsequently appealed by the first party to the United States Circuit Court of Appeals for the Sixth Circuit, and being docketed there and known as cause No. 9638; and whereas on May 31, 1944, a decision was handed down by said United States Circuit Court of Appeals affirming the judgment of the United States District Court for the Eastern District of Michigan, Southern Division; and whereas on July 8, 1944, a mandate was issued out of said United States Circuit Court of Appeals, and directed to the said United States District Court for the Eastern District of Michigan, Southern Division, ordering it to proceed in accordance with the opinion of said United States Circuit Court of Appeals; and whereas the time for filing a petition for certiorari in the United States Supreme Court expires on October 28, 1944; and

Whereas, said B. C. Schram, predecessor Receiver of the First National Bank-Detroit, did on July 22, 1941, file two petitions in the United States District Court for the Eastern District of Michigan, Southern Division, in a suit presently pending in that court entitled Raymond W. Starr, Attorney General, in the name of and on behalf of the People of the State of Michigan, in Equity suit No. 8321, one of said petitions being for an additional declaration of

rights, and the other being a petition for the modification of the decree of the District Court previously entered in said cause No. 8321; and whereas an order was entered on April 20, 1943, in favor of said B. C. Schram, predecessor Receiver of the First National Bank-Detroit, on both of said petitions above mentioned, from which order an appeal was also taken to the United States Circuit Court of Appeals for the Sixth Circuit by the party of the first part herein, said cause being docketed there and known as No. 9610; and whereas on May 31, 1944, a decision was handed down by the United States Circuit Court of Appeals reversing the judgment of the District Court; and whereas on July 8, 1944, a mandate was issued out of said United States Circuit Court of Appeals, and directed to the said United States District Court for the Eastern District of Michigan, Southern Division, ordering it to proceed in accordance with the opinion of said United States Circuit Court of Appeals; and whereas the time for filing a petition for certiorari in the United States Supreme Court expires on October 28, 1944; and

Whereas, it is presently the desire of the parties hereto to forever settle, compromise and conclude said litigation above referred to, as well as the claims of the parties:

Now, Therefore, in consideration of the mutual covenants, promises and acts set forth hereinbelow, it is agreed by and between the parties hereto as follows:

1. Said Civil Action No. 3289, entitled Herbert J. Rushton, Attorney General, in the name of and on behalf of the People of the State of Michigan v. B. C. Schram, Receiver of the First National Bank-Detroit, which case has recently been returned to the United States District Court for the Eastern District of Michigan, Southern Division, under the mandate of the United States Circuit Court of Appeals for the Sixth Circuit above referred to, is to be

dismissed with prejudice and without costs to either party by proper stipulation and order of said United States District Court for the Eastern District of Michigan, Southern Division.

2. Said Equity case No. 8321, entitled Raymond W. Starr, Attorney General, in the name of and on behalf of the People of the State of Michigan, v. B. C. Schram, Receiver of the First National Bank-Detroit, which case has recently been returned to the United States District Court for the Eastern District of Michigan, Southern Division, under the mandate of the United States Circuit Court of Appeals for the Sixth Circuit above referred to, is to be dismissed with prejudice and without costs to either party by proper stipulation and order of said United States District Court for the Eastern District of Michigan, Southern Division.

3. The party of the second part agrees to pay to the party of the first part, simultaneously with the execution hereof, and the party of the first part hereby acknowledges receipt of, the sum of Seventy-five Thousand Dollars ($75,000.00).

4. The party of the first part, acting in the name of and on behalf of the People of the State of Michigan, and by and with the approval of the Michigan State Board of Escheats, and by and with the approval of the Michigan State Administrative Board, does hereby forever waive, release and discharge any and all claims of the State of Michigan, or any of its agencies, boards, departments, officers, agents or employees, or his or their successors in office, against the party of the second part, together with any and all of his predecessors or successors in office, and the First National Bank-Detroit, for any and all inactive, dormant, uncalled for or unproven bank deposits in said First National Bank-Detroit, including any and all divi-

dends or interest thereon, and including by way of description, but not by way of limitation, savings accounts, commercial accounts, certificates of deposit, cashier's checks, Christmas savings accounts, and the like thereof, and also including any and all unpaid dividends or interest which have heretofore been declared payable and/or have accrued but have not been paid over to the State of Michigan, or any of its boards, departments or agencies, on any and all claims for such bank accounts in the First National Bank-Detroit which have heretofore been assigned to the Michigan State Board of Escheats.

5. The party of the second part, on behalf of himself and his predecessors and successors in office, and by and with the approval of the Comptroller of the Currency of the United States, does hereby forever waive, release and discharge any and all claims which he may have or hold against the State of Michigan, or any of its agencies, boards, departments, officers, agents, employees, or their successors in office, for any sums of money whatsoever heretofore paid over to the State Public Administrator, or any of his assistants, the State Board of Escheats, or any other department, board, agency, officer, agent or employee of the State of Michigan, on any inactive, dormant or unproven bank accounts in said First National Bank-Detroit, which have heretofore been claimed for and by the State Public Administrator and/or any of his assistants, or which have heretofore been assigned to the Michigan State Board of Escheats.

6. The party of the second part further agrees to deliver to the party of the first part, or to any agency, department, board, officer or employee of the State of Michigan designated by the party of the first part any and all safekeeping items presently held by the party of the second part, and the party of the first part further

agrees that the Michigan State Board of Escheats will administer said safekeeping items in the manner and under the terms as set forth in Act No. 170 of the Public Acts of Michigan for 1941.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

Herbert J. Rushton, Attorney General, in the name of and on behalf of the People of the State of Michigan,
By Foss O. Eldred, Deputy,
Herbert J. Rushton,
First Party

Witnesses:
Lawrence I. Levi
G. Douglas Clapperton

Joseph T. Connolly, Receiver of the First National Bank-Detroit,
Joseph T. Connolly
Joseph T. Connolly,
Second Party

Lawrence I. Levi
G. Douglas Clapperton